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IN THE

Supreme Court Of The United States

OCTOBER 1965 TERM

JAMES HUBERT SALTER - - - - Petitioner

versus

UNITED STATES OF AMERICA, - - - Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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vs.

UNITED STATES OF AMERICA, - - - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

May it please the Court:

Petitioner prays that a Writ of Certiorari be issued to the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The petitioner was tried by jury, convicted and sentenced in the Federal District Court for the Western District of Kentucky, at Louisville, Kentucky, on an indictment charging him with violating the Mann Act, Section 2421 of Title 18, United States Code by transporting in interstate commerce two women for the purposes of prostitution or debauchery. The Dis-

trict Court denied the petitioner's motion for judgment of acquittal without written opinion. The opinion of the Court of Appeals is not yet reported and is attached to this petition as Appendix A.[1]

JURISDICTION

The Judgment of the Court of Appeals was entered on June 10, 1965. A timely Petition for Rehearing was denied on November 26, 1965. Mr. Justice Stewart entered an order extending the time in which to file this petition up to and including January 11, 1966.

Jurisdiction of the District Court was based on 18 U.S.C. 3231. Jurisdiction of the Court of Appeals rested on 28 U.S.C. 1291. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

This case presents for decision the sole question of whether the Court of Appeals erred in sustaining the trial court's denial of the petitioner's motion for a judgment of acquittal in that there was *no evidence* to justify his conviction under 18 U.S.C. 2421 since the interstate transportation necessary to furnish the gravamen of the indictment and the conviction thereunder was made solely for an innocent purpose as to Counts I and II and was part of a round trip made for an innocent purpose as to Count I.

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1. Reference herein to Petitioner's Appendix in the Court of Appeals is designated as (C.A. App.) and when made to the appendix attached to this Petition is designated as (Appendix).

STATUTE INVOLVED

The statute involved in this case is the Mann Act, 18 U.S.C. 2421 and is presented as Appendix B hereto.

STATEMENT OF THE CASE

1. Procedural History of the Case

Petitioner was indicted and charged in two counts with violating Sec. 2421 of Title 18, United States Code by transporting in interstate commerce from Cleveland, Ohio, to Louisville, Kentucky, two women, at the same time, for the purposes of prostitution or debauchery on or about June 5, 1963. Petitioner entered a plea of not guilty, was tried by jury. The United States introduced several witnesses and rested its case. The Petitioner made a motion for judgment of acquittal as to both counts of the indictment, argued and cited the reasons and authority for his motion (C.A. App. 25a). The Court overruled the motion. The Petitioner did not offer any evidence, closed his case and renewed the motion for judgment of acquittal as to both counts of the indictment. The trial court submitted the case to the jury on both counts and the jury returned a verdict finding Petitioner guilty on both counts.

The Court imposed a sentence on both counts of the indictment as if they were one on the authority announced in *Bell* vs. *United States,* 349 U.S. 81, 99 L.Ed. 905, 755 S.Ct. 620, Rev. C.C.A. 6, 213 F. 2d 629.

The Court imposed judgment of eighteen months and a fine of $1,000.00.

An appeal was perfected to the United States Court of Appeals for the Sixth Circuit and on June 10, 1965, and opinion was rendered affirming the trial court's judgment. A timely Petition for Rehearing was denied on November 26, 1965. Mr. Justice Stewart ordered that the time for filing a petition for writ of certiorari be extended to and including January 11, 1966.

2. The Facts Surrounding the Conviction

The sole question presented is whether there was any evidence to support or justify the conviction. The only witnesses were those introduced by the United States. Barbara Williams was named in Count I of the indictment as the person Petitioner allegedly transported from Cleveland, Ohio, to Louisville, Kentucky, for purposes of prostitution, etc. She testified she first met Petitioner two and a half years ago in Cleveland. She began dating him. Five or six months later they began to live together in Cleveland. They left Cleveland and went to Birmingham, Alabama, where they stayed for one month. In February, 1963, she came to Louisville, Kentucky, alone, and rented a room at the Allen Hotel. Three days later Petitioner came to Louisville. They rented an apartment at 2012 West Broadway. They lived at this address for about four months, until May of 1963. During this period of time she worked as a waitress at a place called Ham 'N Egg and also had prostitution dates for which she

charged "$15.00 and up". She earned most of her income as a waitress. She next worked at the Key Club in Louisville in April, 1963, where she filled prostitution dates. She left the employ of the Key Club and obtained no other employment. She continued to live with Petitioner. They intended to and did make Louisville their home. Petitioner received a Veterans Disability Pension check from the Treasurer of the United States, in the amount of $160.00 per month (Def. Ex. 1 C.A. App. 20a). Petitioner's occupation was peddling costume jewelry, and he had obtained a City of Louisville license on March 28, 1963, with expiration date of July 15, 1964 (Def. Ex. No. 2 C.A. App. 22a). Petitioner had a bank account.

In May of 1963, she and Petitioner traveled by car from Louisville to Nashville, Tennessee, to attend a graduation of a friend, Buster Johnson. While in Nashville, they stayed at Johnson's House. They first met Linda Ann Fitzpatrick on this trip to Nashville. She and Petitioner left Nashville to go to Cleveland, Ohio. Petitioner had purchased a car in Cleveland and had only a ten-day license tag. While in Cleveland, Petitioner had an auto accident which necessitated their staying longer than planned. She did not engage in prostitution while they were in Cleveland. Linda Ann Fitzpatrick came to Cleveland from Nashville with her boy friend in his car. When Barbara and Petitioner were ready to return home to Louisville, Linda asked them for a ride to Louisville where she had relatives. She did not know Linda had filled prostitution dates in Cleveland and did not know

whether Linda did so in Louisville. She said that Petitioner did not procure prostitution dates for her and at no time did she give him any money she made from prostitution. She was asked about the trip from Cleveland to Louisville and whether Linda knew she was coming to Louisville for her to get prostitution dates. She said Linda wanted to come because her boy friend beat her with coat hangers and she had an uncle and cousins in Louisville she was going to look up.

When they arrived at Louisville they went to 2012 West Broadway to see about the apartment, but it had been rented and they were told to come back next week. They registered at a hotel. The first night Linda stayed in their room because she had no money. Later Linda moved to another room which she paid for herself. (It might be mentioned here that the Assistant United States Attorney attempted to impeach his own witness by asking her if she remembered making a contrary statement to Louisville Police Officer Mourney. She denied doing so. However, no such statement was ever produced nor was any testimony offered or other evidence introduced to contradict her. In fact, Officer Mourney was not called to testify). Barbara testified that she was not compelled by Petitioner to come from Cleveland to Louisville and could have left him there or anywhere en route.

Linda Ann Fitzpatrick was named in Count II of the indictment as the other person Petitioner allegedly transported, at the same time, referred to in Count I, from Cleveland, Ohio, to Louisville, Kentucky. She first met Petitioner and Barbara Williams in Nash-

ville, Tennessee, in 1963 while she was working at a club. She left Nashville with another man, her boy friend, in his automobile and traveled to Cleveland, Ohio. After a month in Cleveland, she had a fight with this boy friend who had brought her from Nashville. While in Cleveland she did engage in prostitution. She saw Petitioner and Barbara very seldom in Cleveland. After a month in Cleveland, she had a fight with this boy friend who had brought her from Nashville. She knew Petitioner and Barbara were returning to their home in Louisville. She wanted to get away from her boy friend who had beaten her, and she had some relatives in Louisville, so she asked Petitioner and Barbara if she could go with them to Louisville to look up her relatives who lived there. She said that she did not discuss anything at all about prostitution with Petitioner before they left Cleveland (C.A. App. 8a). She also testified (C.A. App. 7a):

"Q Now, before you left Cleveland, did Salter know that you were coming to Louisville for the purpose of prostitution?

A. No."

When they arrived in Louisville they all stayed at the Henry Clay Hotel and she registered in the name of Sara Blake; that she obtained prostitution dates; that she gave Petitioner money once or twice and that she did work at the Interlude Bar, where she met men whom she took by cab to the Henry Clay Hotel to fill prostitution dates; that on one occasion she used Petitioner's car to go to the hotel; she further testified

that she gave Petitioner Seven Dollars to help pay the expenses from Cleveland to Louisville.

On cross-examination she said when she left Cleveland that Petitioner did not discuss with her anything at all about prostitution (C.A. App. 12a); that he did not know she was going to engage in prostitution when she got to Louisville, that she was under no compulsion by him to come to Louisville and he did not compel her to do so; that she could have come to Louisville or could have refused to come; that she was the one who asked Petitioner and Barbara to bring her to Louisville; that there was an agreement to help pay the expenses; that all during the trip from Cleveland to Louisville and even after she got to Louisville she was free to leave at any time she wanted to; that she had no money when she arrived in Louisville and she spent the first night in Barbara's and Petitioner's room in the Henry Clay Hotel and the next night she rented a separate room in the hotel, and this is the room she was in when arrested; that Petitioner never did lend her his automobile for any particular purpose. On re-direct examination she said that Petitioner knew she engaged in prostitution in Cleveland, but was never at the bar when she made dates with men in Cleveland; but she explained and said, "How he knew, I don't know, unless he knew the group, knew the people" (C.A. App. 15a).

The United States also introduced the following witnesses:

Harold T. Mitchell, Assistant Cashier of the First National Lincoln Bank of Louisville, testified that the

records reflect that Petitioner had an account in his name alone and deposits were made in the early part of 1963. Government's Exhibit No. 1 was admitted as being the bank signature card of James Hubert Salter.

William Howard, former manager of the Henry Clay Hotel, produced a registration card for Room 756 for Mr. and Mrs. John Knight for June 6 through June 9, and a card for Room 724 for Miss Sara Blake for June 6 and June 8th, 9th and 10th.

John Isaac Bryant said he was driving a cab in June and May of 1963 in Louisville and first met Barbara at a place on Chestnut Street known as Miss Christine's; that during this period he hauled Barbara in his cab quite a bit; that he hauled her several places, including 2012 West Broadway, and that she was with James Salter and that it "looked" to him "it was prostitution" between she and Salter; that the only kind of dates "they were, they was white dates". Cross-examination: That he saw Barbara all through the month of May; and when questioned told that Barbara was out of town the last part of May, 1963 and the first part of June, 1963, he admitted he could not say exactly.

REASONS FOR GRANTING THE WRIT

Certiorari is sought by the Petitioner on the grounds that his conviction in the trial court of a violation of 18 U.S.C. 2421 and the affirmance thereof by the United States Court of Appeals for the Sixth Circuit.

(1) In violation of due process because it is absolutely void of any evidence to support the conviction on either Count I or Count II. *Thompson* vs. *City of Louisville,* 362 U.S. 199; *Garner* vs. *Louisiana,* 368 U.S. 157; *Washington* vs. *United States,* 257 U.S. 348; *Shuttlesworth* vs. *Birmingham,* ____ U.S. ____, 15 Law Ed. 2nd 176, 86 S.Ct. ____.

(2) As to Count I is contrary to the decision of this Court in *Mortensen* vs. *United States,* 322 U.S. 369, and conflicts with a decision of the Second Circuit in *United States* vs. *Ross,* 257 U.S. 292 (C.A. 2, 1958), with a decision of the Fifth Circuit in *Smart* vs. *United States,* 202 F. 2d 874, and with a decision of the Seventh Circuit in *United States* vs. *Home,* 306 F. 2d 52.

(3) As to Count II is contrary to the decisions of the Second Circuit in *Alpert* vs. *U.S.,* 12 F. 2d 352; *U.S.* vs. *Gene,* 73 F. 2d 294; and with the decision of the Fourth Circuit in *U.S.* vs. *Fischer,* 266 F. 667, the Seventh Circuit in *U.S.* vs. *Home,* 306 F.2d 52, and the Eighth Circuit in *Sloan* vs. *U.S.,* 287 F. 91.

In more detail, Petitioner's reasons are:

A. Petitioner's Conviction on Count I is Contrary to the Holding in Mortensen vs. United States, 322 U.S. 369.

Count I of the Indictment charges that Petitioner knowingly transported Barbara H. Williams in interstate commerce from Cleveland to Louisville for the purpose of prostitution or debauchery. The evidence in this case involves what some cases refer to as a "round trip case" in that Barbara was transported to Cleveland by Salter from Louisville and she was transported back to Louisville from Cleveland by

Salter. The indictment charges that the return trip, i.e. from Cleveland to Louisville, was the one causing the violation of the Federal law. A case squarely in point and controlling on this issue is the case of *Mortensen* vs. *U.S.*, 322 U.S. 369, 88 L. Ed. 1031, 64 S. Ct. 1037, rev. C.C.A. 8, 139 F. 2d 967. A comparison of the facts, item by item, will clearly indicate that this case is squarely in point.

PETITIONER'S CASE	MORTENSEN CASE
1. Salter lived in Louisville from Feb. 1963 to the latter part of May 1963; he had his bank account here; he applied for and was issued a peddler's license by the City of Louisville. Barbara H. Williams lived with him at 2012 W. Broadway. She also said she worked as a prostitute in Louisville. She said that her income as a prostitute was not given to Salter but this is immaterial.	1. The defendants, man and wife, lived in Grand Island, Nebraska and operated a house of prostitution. The 2 girls charged in the counts of the indictment also lived in Grand Island, Nebraska, and worked in defendants' house of prostitution as prostitutes.
2. Barbara testified that she and Salter went to Tennessee to visit friends and see a friend graduate from college. From there she said they went to Cleveland, Ohio for the purpose of getting a permanent license plate for Salter's car which he had previously purchased because the temporary or dealers tag was about to expire. That while in Cleveland, Salter had an accident which necessitated their staying longer (C.A. App. 23a).	2. Defendants planned a motor trip to Salt Lake City, Utah to visit Mrs. Mortensen's mother. The two girls asked to be taken along for a vacation. They traveled to Salt Lake City, Utah, where they all stayed in a tourist camp for 4 or 5 days. No acts of prostitution or other immorality occurred during the two week trip and no discussion of such during the course of the journey. Both girls testified that during the trip they gave no consideration to their work as prostitutes and made no plans to abandon such activities.

Petitioner's Case	Mortensen Case
3. Barbara, a government witness testified that she was under no obligation or compulsion of any kind to return to Louisville to work as a prostitute for anyone; that she could have left Salter anywhere en route. This was uncontradicted (C.A. App. 24a).	3. Both girls testified that they were under no obligation or compulsion of any kind to return to Grand Island to work for defendants. This was uncontradicted.
4. After their return to, Louisville, Barbara and Salter went to 2012 W. Broadway to rent their apartment, but it was occupied. They then registered in the Henry Clay Hotel and the Defendant, Salter, was arrested by the F.B.I. and charged. Barbara did not return to her employment as a prostitute in this 2 day period and did not testify that she had any intent to (C.A. App. 24a).	4. After their visit in Salt Lake City, Utah, defendants drove the two girls back to Grand Island, Iowa, where both girls resumed their work as prostitutes in defendants' house of ill fame and continued to work for defendants for a period of a year or more after their return from Salt Lake City, Utah.
5. Barbara's testimony as a government witness was undisputed that the trip was one of pleasure to Tennessee and one of business to get a license for Salter's car when they traveled to Cleveland (C.A. App. 23a). She also said that her trip to Louisville was to return to their state of residence (C.A. App. 20a).	5. It was undisputed that this was purely a vacation trip with the girls paying their own living expenses and defendants bearing the expenses of transportation. Both girls claimed that Grand Island was their residence.
6. Barbara testified that she could have, at any time, left Salter in Cleveland or anywhere en route (C.A. App. 24a).	6. The two girls were free at any time before, during or after the vacation excursion to leave defendants' employ and engage in their own pursuits.
7. Salter was charged in a two count indictment with	7. Defendants were charged in a two count indictment

Petitioner's Case	Mortensen Case
violating Section 2 of the Mann Act in that they transported and caused to be transported two girls in interstate commerce from Cleveland to Louisville for the purpose of prostitution, debauchery, or other immoral purposes (C.A. App. 3a).	with violating Section 2 of the Mann Act in that they transported and caused to be transported two girls in interstate commerce from Salt Lake City to Grand Island for the purpose of prostitution and debauchery and with intent to induce, entice and compel the girls to give themselves up to debauchery and to engage in immoral practices.
8. The jury was charged that if the purpose to go to Cleveland was a legitimate purpose, to get a license for Salter's car, that the transportation of Barbara from Cleveland was not for immoral purposes or purposes of prostitution (C.A. App. 28a).	8. The jury was charged that: purpose was an essential ingredient of the crime and that if the jury found that the transporting from Salt Lake City to Grand Island was planned with no immoral purpose, no crime was committed.
9. The jury was told that the Government must establish beyond a reasonable doubt that Salter transported the girls in interstate commerce for the purpose of debauchery, prostitution or other immoral purposes (C.A. App. 27a and 28a).	9. The jury was also told that: to convict, it must find that the Government had proved beyond a reasonable doubt that petitioners transported the girls from Salt Lake City to Grand Island for the purpose of prostitution and debauchery.
10. The jury returned a verdict of guilty on both counts.	10. The jury returned a verdict of guilty on both counts.
11. The primary issue is whether there was any evidence from which the jury could rightly find that Salter transported Barbara from Cleveland, Ohio, to Louisville for an immoral purpose in violation of the Mann Act.	11. The primary issue was whether there was any evidence from which the jury could rightly find that petitioners transported the girls from Salt Lake City to Grand Island for an immoral purpose in violation of the Mann Act.

Barbara had engaged in prostitution before she and Petitioner left for a visit to Nashville, Tennessee, to see a friend graduate from college. From Nashville they traveled to Cleveland, Ohio, for another innocent purpose, to obtain a permanent auto license in exchange for a temporary car dealer tag that was on Petitioner's car. She testified that she *had not* engaged in prostitution in Cleveland and there was no testimony that she engaged in such acts from the time she left Louisville. Actually the evidence clearly indicates that her trip was for the purpose of departing for a while from her usual occupation as a prostitute. Her return trip to Louisville was for the purpose of returning to her place of residence. There was no testimony that she returned to her trade when she arrived back in Louisville, but actually it makes no difference. Even if she returned to Louisville to resume her occupation as a prostitute, there would be no violation of the Mann Act.

In the Mortensen case, petitioners operated a house of ill repute in Nebraka. They were husband and wife. In 1940, they took an automobile trip to Utah in order to visit Mrs. Mortensen's parents. Two of their working prostitutes asked to be taken along for a vacation and the Mortensens agreed to their request. The party visited Yellow Stone National Park and then went on to Salt Lake City, where they all stayed at a tourist camp for four or five days. The girls went to shows and toured other parts of Salt Lake City. The party then returned in petitioner's automobile to Nebraska. On their arrival, they went immediately to petitioners'

house of ill fame, whereupon the girls resumed prostitution.

The jury conviction of the Mortensens was reversed by this Court in a five to four decision. The late Mr. Justice Murphy delivered the majority opinion. As he put it, "the primary issue . . . is whether there was any evidence from which the jury could rightly find that petitioners transported the girls from Salt Lake City [the last leg of the vacation trip] to Grand Island [Nebraska] for an immoral purpose in violation of the Mann Act." 322 U.S. 369, 373. Noting that this Court has "never hesitated to examine a record to determine whether there was any competent and substantial evidence fairly tending to support the verdict," the majority concluded that there was "a complete lack of relevant evidence from which the jury could properly find or infer" that the petitioners had transported the prostitutes in interstate commerce for any of the illegal purposes condemned by 18 U.S.C. 2421. The majority held that, while it was clear that the petitioners anticipated that the girls would resume prostitution on their return from their vacation trip, this did not "justify an arbitrary splitting of the round trip into two parts so as to permit an inference that the purpose of the homeward journey to Grand Island was criminal." Finding that there was no evidence of any change in the purpose of the trip, which was innocent when it began, the majority concluded that the trip "remained so until it ended." 322 U.S. 369, 375.

This Court again applied the rule of the *Mortensen* case in *Oriolo* vs. *United States,* 324 U.S. 824, summarily reversing the Third Circuit, which had held that evidence showing that a woman who worked for the defendant as a prostitute in Pennsylvania, whose railroad ticket back to Pennsylvania had been paid by the defendant after both had been arrested while on an automobile trip to New Jersey, the defendant then informing the woman that she would have to resume the business of prostitution in Pennsylvania in order to enable him to pay the New Jersey fine, sustained defendant's conviction under the Mann Act. The majority found that although the trip from Pennsylvania to New Jersey was for the purposes of vacation, there "was evidence of a change in the purpose of the trip during the course" of it. That change in purpose they found in defendant's statement to the woman that she would have to resume prostitution when she returned to Pennsylvania so that he might be able to pay the fine imposed in New Jersey. 146 F.2d 152 (C.C.A. 3, 1945). This "change in purpose" the dissenting judge, on the other hand, regarded as "too trivial" to support the conviction in light of the *Mortensen* case, supra.

B. The Decision Below as to Count I Conflicts With a Decision of the Second Circuit.

In the recent case of *United States* vs. *Ross* (C.C.A. 2) 257 F. 2d 292, the court held, in an opinion by Judge Medina, that the evidence was insufficient to sustain the conviction, reversed the case and dis-

missed the indictment. In this case the girl was a prostitute who "plied her trade regularly in New York City in various apartments. Ross rented an apartment which he and the girl occupied on weekends and at other times as husband and wife. On two weekends in January 1956 they drove to Newark Saturday afternoon and returned Sunday evening. Upon her return the girl went back to her regular work. *It was clear that* Ross and the girl considered these weekends as devoted to recreation and refreshment. These weekends were definitely not professional engagements, with no evidence of payments by Ross to the girl for anything done on these weekends. "Even if appellant had paid Nelda it would make no difference, as the charge is not that he took her to Newark for immoral purposes, but rather that he transported her from Newark to New York for the purpose of prostitution." In following the rule in the *Mortensen* case, supra, the Court said:

> "As Nelda returned to her occupation as soon as appellant drove her from Newark to New York, and as he knew full well that she would do this, one might suppose that the violation of the Mann Act was clearly established. But the Supreme Court in an unbroken line of decisions on the precise point has held that the trip to and fro must be taken as a unit. It cannot be split up into two trips. If appellant and Nelda went to Newark for a weekend of recreation, the return trip cannot be separated from but remains an integral part of a single unitary undertaking. The lurid details which involve one or two other 'girls,' and what

the witnesses are pleased to call a 'prostitution party,' have no bearing whatever on the specific, limited and simple charge against appellant in the Third and Fourth Counts of the indictment.

"The leading case is Mortensen v. United States, 322 U.S. 369, 64 S.Ct. 1037, 1039, 88 L.Ed. 1331. The Mortensens ran a house of prostitution in Grand Island, Nebraska. One day they planned a trip to Salt Lake City for a short vacation. Two of the 'girls' begged to be taken along with the result that the party of four spent several days going 'to shows and around in the parks,' having a good time. The 'girls' were perfect ladies during the entire trip. But, when the Mortensens brought them back to Grand Island, they went right back to work in the same rooms in the Mortensen establishment they had previously occupied. It looked like a clear case; but the Supreme Court held no. The evidence was held not to 'justify an arbitrary splitting of the round trip into two parts so as to permit an inference that the purpose of the drive to Salt Lake City was innocent while the purpose of the homeward journey to Grand Island was criminal' (322 U.S. at page 375, 64 S.Ct. at page 1041). See, also, Oriolo v. United States, 324 U.S. 824, 65 S.Ct. 683, 89 L.Ed. 1393, reversing the Third Circuit decision reported in 146 F. 2d 152."

The authorities cited above clearly hold that there was no substantial evidence to support the verdict of guilty on Count I of the indictment. We respectfully submit that this case should be reversed and the lower Court directed to enter a judgment of acquittal.

C. The Decision Below as to Count I Conflicts With a Decision of the Fifth Circuit.

In the case of *Smart* v. *United States,* 202 F. 2d 874, the United States Court of Appeals for the Fifth Circuit held in a case where the facts were that two girls had been transported from Louisiana to Galveston, Texas, by a co-defendant and taken to the defendant's house where they engaged in prostitution for about two and one-half weeks. The defendant then transported these girls to Louisiana for the sole purpose of taking care of some legal matters that were pending in that state. They all returned to Galveston the same day. While the defendant was in Louisiana she was contacted by a third girl who indicated that she would like to work for the defendant in Galveston. The defendant accepted the offer and the third girl accompanied the party on the return trip to Galveston. There is no indication that when defendant and the two girls left Galveston that there was any doubt of their return. Likewise there was no evidence that any act of prostitution was performed by the two girls while in Louisiana or that they or defendant intended that any would be performed. In reversing the lower court on the two counts of the indictment in question the appellate court held "upon consideration of the record as a whole we think that the case as to Counts 4 and 5 of the indictment is controlled by the decision in *Mortensen* v. *United States,* 322 U.S. 369, 64 S.Ct. 1037, 88 L.Ed. 1131, and that the trial court should have sustained appellant's motion for judgment of acquittal on those counts."

D. The Decision Below as to Count II Conflicts With Decisions of the Second Circuit, Fourth Circuit, Seventh Circuit, and the Eighth Circuit.

Count II charges Petitioner transported Linda Ann Fitzpatrick from Cleveland to Louisville for purpose of prostitution, debauchery and other immoral purposes. Petitioner contends that the law requires the criminal intent must have been formed *before* he left Cleveland. The facts as recited in the Statement of the Case, supra, clearly reflects that there was absolutely no evidence that Petitioner had the criminal intent before they left Cleveland. The Court below held in its opinion in this case:

> "We think there was abundant evidence to support the verdict of guilty with respect to Count II involving the transportation of Linda. *Salter knew she was engaged in prostitution in Cleveland. She engaged in prostitution immediately upon their arrival in Louisville. She made one or two payments to Salter.*" (Emphasis added.)

We respectfully submit that this statement is not supported by the evidence. It must be remembered that Linda was a witness for the prosecution. The prosecution is bound by her testimony. On cross-examination she testified, page 12a, C.A. Appendix:

> "Q. And when you left Cleveland, you told us just a minute ago, if I understand correctly, that Salter *did not* discuss with you anything at all about trans . . . about prostitution, is that correct?

A. That's correct.
Q. Then he did not know that you left Cleveland to come to Louisville to engage in prostitution, is that correct?
A. Well, yes. Not to come to Louisville, that's right.
Q. Now you were under no compulsion by Salter to come to Louisville were you?
A. No.
Q. I mean, he didn't compel you to.
A. No.
Q. You could have come or you could have refused to come?
A. That's true.
Q. And you were the one that asked them to bring you?
A. That's right."

She further testified on re-direct examination as follows, pages 14a and 15a, C.A. Appendix:

"MR. CARROLL: Do you—I want to ask you one thing.
Mr. Haddad asked you if you knew if Salter knew that you were coming here for prostitution purposes and you seemed to have some hesitancy before you answered. What do you mean by that? Did he know that you were engaging in prostitution purposes in Cleveland? Did he know that?
MISS FITZPATRICK: Yes.
Q. And had he been with you at the bar when you had made dates with men in Cleveland?
A. *No.*
Q. Well, how did he know that you were engaging in prostitution?

A. *How he knew, I don't know, unless he knew the group, knew the people."*

The above testimony by Linda does not reflect that Salter knew she was engaged in prostitution in Cleveland. In fact, her testimony, "How he knew, I don't know, unless he knew the group, knew the people," clearly indicates there is a strong possibility that Salter did not know and that she was simply surmising that he *might possibly know*. She testified that Salter did not discuss this matter with her about coming to Louisville to engage in prostitution. In fact her testimony was simply that after having engaged in a dispute with her boy friend, she asked Salter and Barbara, who were on their way back to Louisville, to bring her to Louisville to look up one of her relatives. The Court below placed a great deal of emphasis upon the fact that once she arrived in Louisville that she did engage in prostitution. *We respectfully submit that all the authority clearly holds that the intention must have originated in the State that the parties departed from.* The purpose of the trip from all of the evidence, as far as transportation of Linda from Cleveland to Louisville is concerned, was solely to get her away from her boy friend who had beaten her and for her to come to Louisville and look up her relatives. The fact that she engaged in prostitution is immaterial.

In the case of the *United States* vs. *Fischer,* 266 F. 670 (C.A. 4), the Court held, to justify a conviction, *there should be convincing evidence of the intention to transport the woman for immoral purposes and that*

it was formed before the woman reached the State to which she was transported. If the intention referred to did not exist before the woman reached the State to which she was being transported, but was formed after she reached the State in which the illicit relationship is had, then conviction under the act cannot be had. *Sloan* vs. *U.S.*, 287 F. 91 (C.A. 8).

The Court below stated in its opinion, "The jury could conclude from all of the evidence that the real intent of Linda's transportation from Cleveland to Louisville was for the purpose of prostitution." The Court relied upon the case of *Bush* vs. *United States,* 267 F. 2d 483 (C.A. 9, 1959), which is clearly distinguishable from the case at bar. In the *Bush* case there was undisputed evidence that the defendant took his wife, a known prostitute, and a 17-year old complaining witness from Texas to California. The fact that the complaining witness engaged in prostitution immediately after her arrival jointly with the defendant and his wife in California, is likewise undisputed. Whether or not the complaining witness and the defendant engaged in immoral acts on the trip to and after arrival within California, is disputed. The Court held, "Because of this undisputed testimony, much of it given by the defendant himself, the sole issue remaining for solution was the *intent of the defendant—did he have intent, purpose and motive in bringing the complaining witness to California to have her engage in immoral practices.*" The defendant contended that he was duped by the complaining witness and that she tried to lure him into an entrapment to

get out of some troubles of her own. The complaining witness testified that the defendant met her in Dallas, Texas, and that she told him that she wanted to be a prostitute. *She further testified that he took her to Beaumont, Texas, by plane to enter a house of prostitution.* This was denied by the defendant.

It is clearly evident that in the *Bush* case the complaining witness *clearly stated that the defendant took her to California for the purpose of prostitution.* The defendant denied this. This raised a clear issue of fact, which was left to the jury to decide. In the case at bar there is no issue of fact for the jury to decide. The evidence is undisputed and left clearly for the jury to surmise or speculate because Linda testified she came to Louisville *NOT* for the purpose of prostitution. In the *Bush* case the complaining witness clearly stated that the defendant took her from Texas with the *clear intent* to put her in a house of prostitution.

Another case which clearly holds that under the Mann Act the immoral purpose must be found to exist *before* conclusion of the interstate journey and must be a *dominant* motive of such interstate movement; must be an efficient purpose, or be it one of several as distinguished from an incidental one, is the case of *Reamer* vs. *United States,* 318 F. 2d 43 (C.A. 8), certiorari denied 84 S.Ct. 129. Linda clearly indicated at her testimony that the Defendant did not procure nor induce her transportation, that she was the one that asked him for the ride and actually paid some of the costs of the gasoline. In the case of *United States* vs.

McCooney, 329 F. 2d 467 (C.A. 2), the Court held that in order to establish a violation of the Mann Act, there must be a showing that the defendant *procured* or *induced* the transportation of the female in interstate transportation with the intent of thereby effecting or achieving illicit personal relations or other prescribed purposes.

The opinion below, pages 3 and 4, stated that Salter contended with respect to Court I of the indictment charging the transportation of Barbara, that the trip to Cleveland was for lawful purposes, mainly to secure a license plate for his car. That Barbara engaged in no act of prostitution while in Cleveland; and that in transporting her to Louisville he was merely returning to their home. We must remember that *Salter did not testify* and that this proof was again given by a witness for the prosecution, Barbara. The prosecution is bound by her testimony and there is only one conclusion. Her testimony is undisputed. There was no evidence that she had engaged in prostitution on any of the trips nor even so when she returned to Louisville. The cab driver's testimony that the Court below refers to on page 2 of the Opinion, that Salter told him that Barbara was only to have white dates was referring to a time *before they left Louisville.* The Court below in its opinion apparently felt that because the jury was given an instruction from the trial court that permitted them to believe or not believe that the trip to Cleveland and the return was for legitimate purpose was sufficient and that the jury evidently did not believe that the trip to Cleveland and return

was for legitimate purpose. It must be remembered that as far as this indictment is concerned that a trip to Cleveland need not have been for a legitimate purpose because the indictment charges that the offense occurred in the transportation from Cleveland to Louisville, and not Louisville to Cleveland. The big question was whether or not the return was for a legitimate purpose. We respectfully submit that the evidence is uncontradicted. Barbara's testimony was that their trip to Tennessee was for the purpose of staying and visiting with a relative who was graduating from college and that on the subsequent trip to Cleveland she did not engage in any prostitution in Cleveland and she returned to Louisville where they had lived for some months before that to again resume their residence.

The Court of Appeals distinguishing of *Mortensen* vs. *U. S.*, 322 U.S. 369, relied upon by the Defendant-Appellant is on the basis of its further statement in the opinion that "Salter transported a new victim from Cleveland, who had engaged in prostitution not only there but in Louisville as soon as she arrived." Regardless of whether she engaged in prostitution in Louisville, or even if she had engaged in prostitution in Cleveland and even if the evidence were undisputed, which it is not as above referred to, that Salter knew she did engage in prostitution in Cleveland, if the purpose for bringing her to Louisville was as she stated, to visit her relatives, then there was no evidence which the jury could legally infer otherwise. The only

thing that the jury could possibly deduct was a suspicion that an intent was formed in Cleveland.

In *Alpert* vs. *United States,* 12 F. 2d 352, the Second Circuit, where only the woman testified, said that whether or not the accused *intended* to indulge in sexual relations *before* leaving New York, is left entirely to influence and held . . . "To justify a conviction, there should be convincing evidence of the intention to transport the woman for immoral purposes, and that it was formed before the woman reached the state to which she was being transported. If the intention referred to did not exist before the woman reached the state to which she was being transported, but was formed after reaching the state in which the illicit relationship is had, conviction under the act cannot be had."

In reversing another conviction the Second Circuit in *United States* vs. *Gene,* 73 F. 2d 294, held the same as they did in *Alpert* vs. *United States* 12 F. 2d 352.

In *United States* vs. *Home,* 306 F. 2d 52, the Seventh Circuit in reversing the District Court in a case tried without a jury, where the facts were not in dispute, having been established by the testimony of the woman which disclosed that the purpose of the trip from Reno, Nevada to Laurel, Maryland, was other than prostitution said:

> "An intention that the woman or girls shall engaged in the conduct outlawed by 2, must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. And the transporta-

tion must be designed to bring about such result. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act."

There can be no dispute about Linda's testimony, which is *all* the testimony on this point. No intention was formed in Cleveland, Ohio, to come to Louisville, Kentucky, to engage in prostitution.

The authorities cited above clearly point out that there was no substantial evidence to support the verdict of the jury. The purpose of leaving Cleveland was clearly one other than prostitution. The government evidence proves beyond any doubt that Linda's reason for leaving Cleveland was because her boy friend had beat her and she asked Salter and Barbara to take her to Louisville for the purpose of looking up her relatives who lived there

We respectfully submit that the verdict of the jury finding the defendant guilty of Court II of the indictment to be set aside because there is no substantial evidence to support it.

E. The Conviction on Both Count I and Count II Is Without Any Evidence To Support It.

We are not asking the Court to review evidence or to discuss specific facts. We do contend that the case should be reviewed by this Court for the reason that there is *absolutely no evidence* to support the conviction and as such results in gross unfairness

rendering the conviction unconstitutional. This Court granted review and revised for this reason the cases of *Thompson* vs. *City of Louisville,* 362 U.S. 199; *Garner* vs. *Louisiana,* 368 U.S. 157, 163; and *Washington* vs. *United States,* 357 U.S. 348.

The most recent cases granted review and reversed by this Court for the reason that there was no evidence to support the conviction is *Shuttleworth* vs. *City of Birmingham,* ____ U.S. ____, 15 L.Ed. 2d, 176, 86 S.Ct. ____, decided November 15, 1965. In holding that there was no evidenc whatever in the record to support the conviction and that to convict and punish one without evidence of his guilt was a violation of due process, this Court said:

> "Five years ago this Court decided the case of Thompson v. City of Louisville, 362 US 199, 4 L ed 2d 654, 80 S Ct 624, 80 ALR2d 1355. There we reversed the conviction of a man who had been found guilty in the police court of Louisville, Kentucky, of loitering and disorderly conduct. The proposition for which that case stands is simple and clear. It has nothing to do with concepts relating to the weight or sufficiency of the evidence in any particular case. It goes, rather, to the most basic concepts of due process of law. Its application in Thompson's case turned, as Mr. Justice Black pointed out, 'not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all.' 362 US at 199, 4 L ed 2d at 655, 80 ALR2d 1355. The Court found there was 'no evidence whatever in the record to support these convictions,' and held that it was 'a viola-

tion of due process to convict and punish a man without evidence of his guilt.' 362 US at 206, 4 L ed 2d at 659, 80 ALR2d 1355. See also Garner v. Louisiana, 368 US 157, 7 L ed 2d 207, 82 S.Ct. 248."

F. If Petitioner Was Entitled to a Judgment of Acquittal on Either Count of the Indictment, He Is Entitled to a Reversal.

A motion for judgment of acquittal as to Count I and Count II, by Petitioner at the conclusion of the evidence was overruled. The case was submitted to the jury and Petitioner was convicted of Count I and Count II of the indictment. However, the trial court sentenced Petitioner as though the conviction were for only one violation pursuant to the authority announced in *Bell* vs. *United States,* 349 U.S. 81, 99 L. Ed. 905, 755 S.Ct. 620, Rev. C.C.A. 6, 213 F. 2d 629, holding that to transport more than one woman at the same time amounts to only one violation. However, the Court of Appeals below said in its opinion, Appendix A, page 2:

> "If the evidence is sufficient to sustain the conviction on either Count, the judgment must be affirmed."

The Court below *implies* that even though there may not be sufficient evidence to support the conviction as to Count I, they held otherwise and said "In any event as we have pointed out, the evidence clearly supported the conviction on Count II." We respectfully disagree with this reasoning. If the Petitioner

was entitled to a directed verdict of acquittal on one count, but it was submitted to the jury, how can it be reasonably determined the effect this had on the jury in rendering its verdict? For example, where there are several confessions entered into evidence and later only *one* is held by an appellant court to have been erroneously admitted, the Courts consistently hold that the conviction should be reversed because it cannot be determined what effect this *one* confession may have had on the jury in returning its verdict although all the other confessions were admissible.

Petitioner respectfully submits that there was no evidence whatever in the record to support his convictions of both counts of the indictment and to convict and punish him without evidence of his guilt is a violation of due process.

CONCLUSION

For the foregoing reasons, this petition for Writ of Certiorari should be granted.

Respectfully submitted,

FRANK E. HADDAD, JR.
Counsel for Petitioner

APPENDIX A

OPINION OF THE COURT

Filed June 10, 1965
Carl W. Reuss, Clerk

No. 15917

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

United States of America - Plaintiff-Appellee

v.

James Hubert Salter - Defendant-Appellant

On Appeal from the United States District Court
for the Western District of Kentucky,
at Louisville

Decided June 10, 1965

Before WEICK, Chief Judge, O'SULLIVAN, Circuit Judge, and MCALLISTER, Senior Circuit Judge.

WEICK, Chief Judge. Appellant Salter was convicted by a jury in the District Court on a two-count indictment which charged him with transporting Barbara H. Williams and Linda Ann Fitzpatrick in interstate commerce from Cleveland, Ohio, to Louisville, Kentucky, for purposes of debauchery and prostitution, in violation of Title 18 § 2421, U.S.C. Both women had been transported by Salter simultaneously in Salter's automobile. The Court treated the convictions on the two counts as a single offense on the authority of *Bell* v. *United States*, 349 U.S. 81 (1955). He sentenced Salter to eighteen months' imprisonment

and fined him $1,000. This appeal is from the judgment of conviction.

The principal contention of Salter was that the verdict of the jury was not supported by substantial evidence. His motions for judgment of acquittal were denied by the Court. He rested his case at the close of the Government's evidence in chief.

In considering the issue as to the sufficiency of the evidence, we are required to view the evidence as well as the inferences properly deducible therefrom in the most favorable light to the government. E.g., *United States* v. *Carter,* 311 F.2d 934 (C.A. 6, 1963), cert. denied 373 U.S. 915; *United States* v. *Sykes,* 305 F. 2d 172 (C.A. 6, 1962) rev. on other grounds in 376 U.S. 364; *United States* v. *Decker,* 304 F.2d 702 (C.A. 6, 1962); *United States* v. *Berkley,* 288 F.2d 713 (C.A. 6, 1961) cert. denied 368 U.S. 822.

The Government's evidence consisted of the testimony of Linda, Barbara, a cab driver and a banker. Salter did not take the witness stand. If the evidence is sufficient to sustain the conviction on either count, the judgment must be affirmed.

Salter and Barbara had been living together in Cleveland. In February, 1963, they went to Birmingham, Alabama, where they stayed for about one month. Barbara left Birmingham and went to the Allen Hotel in Louisville, where she was joined by Salter. They moved into an apartment, living there for about four months.

In Lousiville Barbara engaged in prostitution, earning from four hundred to six hundred dollars between February and June. Her price was fifteen dollars and upwards.

Salter had a peddler's license to sell costume

jewelry in Louisville. He had a bank account in a Louisville bank. He received one hundred sixty dollars a month in checks from the Veterans' Administration for disability benefits. There was no evidence as to his income from jewelry sales. He drove a Cadillac automobile.

A cab driver testified as to driving Barbara around. He met her at a house of prostitution. The cab driver had a conversation with Salter, who told him that Barbara was to have only "white dates."

The following question was propounded to Barbara, and she answered as indicated:

> "Q. Do you recall in that same statement telling the member of the Louisville Vice Squad, 'The money we both made hustling, we put in the bank and paid our bills with.' Do you recall making that statement?
>
> A. Yes. He put his money in the bank and I paid my bills."

Barbara testified that Salter drove her to Nashville, Tennessee, to attend the graduation of a relative. They gave up their apartment in Louisville. While in Nashville they met Linda and her boy friend. The two couples drove in separate cars to Cleveland, Ohio. Salter was required to go there to get a license for his automobile since he had only a temporary one. They remained in Cleveland for about three weeks.

While in Cleveland Linda engaged in prostitution. Salter had knowledge of this fact. Salter drove Barbara and Linda back to Louisville in his automobile. Linda paid Salter seven dollars to help defray the expense. When they arrived in Louisville, Linda registered at the Henry Clay Hotel as Sarah Blake, and Barbara and Salter registered as Mr. and Mrs.

John Knight. They all used one room on the first night. On the next day Linda secured a room of her own, and she engaged in prostitution. She gave money to Salter once or twice, but did not remember how much. On one occasion she borrowed Salter's car to transport to her hotel room a person with whom she fulfilled a prostitution date. She was arrested that evening, which was one day after her arrival in Louisville.

There was no evidence that Barbara engaged in prostitution during their three weeks' stay in Cleveland or during the short time in Louisville before Linda was arrested.

We think there was abundant evidence to support the verdict of guilty with respect to Count II involving the transportation of Linda. Salter knew she was engaged in prostitution in Cleveland. She engaged in prostitution immediately upon their arrival in Louisville. She made one or two payments to Salter.

The jury could conclude from all the evidence that the real intent of Linda's transportation from Cleveland to Louisville was for the purpose of prostitution. *Bush* v. *United States,* 267 F.2d 483 (C.A. 9, 1959).

It was not necessary to prove that the interstate transportation was for the sole purpose of prostitution. It is sufficient if prostitution was only one of the dominant purposes. E.g. *United States* v. *Farber* 336 F.2d 586 (C.A. 6, 1964); *Lindsey* v. *United States,* 227 F.2d 113 (C.A. 5, 1955) cert. denied 350 U.S. 1008; *Batsell* v. *United States,* 217 F.2d 257 (C.A. 8, 1954); *Hardie* v. *United States,* 208 F.2d 694 (C.A. 5, 1953); *Dunn* v. *United States,* 190 F.2d 496 (C.A. 10, 1951).

Salter contended with respect to Count I of the indictment charging the transportation of Barbara, that the trip to Cleveland was for a lawful purpose,

namely, to secure license plates for his car; that Barbara engaged in no acts of prostitution while in Cleveland; and that in transporting her to Louisville he was merely returning to their home. He relied on *Mortensen* v. *United States,* 322 U.S. 369 (1944). The District Judge charged the jury in this respect:

> "Now, if you ladies and gentlemen believe that this—that this trip was merely to go to Cleveland for this legitimate purpose and to return and that was the intention in taking this trip, then of course, you could not find that this transportation of this particular victim from Cleveland to Louisville was for immoral purposes or purposes of prostitution."

The jury evidently did not believe that the trip to Cleveland and return was for a legitimate purpose. The jury's verdict was supported by direct as well as circumstantial evidence and inferences which the jury could draw therefrom.

The facts in the present case are materially different from *Mortensen,* on which Salter relies. Salter transported a new victim from Cleveland, who had engaged in prostitution not only there but in Louisville as soon as she arrived. The jury was not required to regard Louisville as the home of Salter and Barbara, but rather could consider it as a temperary base for their illicit operations. The jury might not have believed that Salter gave up his apartment in Louisville just to go to Cleveland for his automobile license.

In any event, as we have pointed out, the evidence clearly supported the conviction on Count II. The judgment could be affirmed on this count alone.

No objection was made by Salter to the Court's

charge. Subsequently the jury asked the Court a question of law and the Court repeated his instruction as to the elements of the offense. No objection was made to this supplemental instruction.

Salter now claims that the Court should have given another instruction on reasonable doubt. This was unnecessary since the supplemental instruction is interpreted in the light of the instructions previously given, *Whitt* v. *United States*, 261 F.2d 907, 909 (C.A. 6, 1959).

Furthermore, failure to object to the charge precludes Salter from raising this question. Rule 30 Fed. R.Crim.P.; *Baker* v. *United States*, 310 F.2d 924 (C.A. 9, 1962) cert. denied 372 U.S. 954; *United States* v. *Decker, supra.*

Affirmed.

APPENDIX B

Statute Involved

The statute involved in this case is the Mann Act, 18 U.S.C. 2421, which provides:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or
>
> Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immortal purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 894

JAMES HUBERT SALTER, APPELLANT

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 346 F. 2d 509.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 1965. A petition for rehearing was denied on November 26, 1965. By order of Mr. Justice Stewart, the time for filing a petition for a writ of certiorari was extended to and including January 11, 1966. The petition for a writ of certiorari was filed on January 10, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

208-144—66

QUESTION PRESENTED

Whether the evidence supported petitioner's conviction for violation of the Mann Act.

STATUTE INVOLVED

18 U.S.C. 2421 provides in pertinent part:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice * * *.
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

An indictment in the United States District Court for the Western District of Kentucky charged in two counts that petitioner transported Barbara Williams and Linda Fitzpatrick for immoral purposes from Cleveland, Ohio, to Louisville, Kentucky, in violation of 18 U.S.C. 2421 (1 R. 3).[1] Petitioner was convicted by a jury on both counts and received a general sentence of eighteen months' imprisonment and $1,000 fine (1 R. 2, 5, 30). The court of appeals affirmed.

The evidence for the government, consisting princi-

[1] "1 R." refers to appellant's appendix in the court of appeals. "2 R." refers to the government's appendix in that court.

pally of the testimony of the two women named in the indictment, may be briefly summarized: Petitioner met Miss Williams in Cleveland in 1962 and they began living together five or six months thereafter. In January or February 1963, they moved to Birmingham, Alabama, where petitioner sold jewelry on the streets and Miss Williams worked as a barmaid. After about a month, Miss Williams moved to Louisville, where she was joined three or four days later by petitioner (2 R. 15–17). Miss Williams testified that she worked as a waitress and as a prostitute, but that petitioner supported her (2 R. 18–20). She stated that she made about $400 filling prostitution dates in Louisville (2 R. 22).

A cab driver testified that he met Miss Williams in May 1963 at a house of prostitution in Louisville and that thereafter he drove her frequently. Petitioner told the driver that he wanted Miss Williams to have only white dates (2 R. 36–38).

In May 1963, petitioner and Miss Williams went to Nashville, where they met Miss Fitzpatrick, who was working at a night club. Miss Williams testified that the purpose of the visit was to attend the graduation of a friend (2 R. 5, 27–28). Petitioner and Miss Williams went from Nashville to Cleveland, according to Miss Williams' testimony, for the purpose of obtaining license plates to replace the "ten-day tag" on petitioner's car. Miss Fitzpatrick and a boy friend also went from Nashville to Cleveland, where Miss Fitzpatrick worked as a prostitute. On account of an automobile accident, petitioner was detained in

Cleveland (2 R. 6, 10), where they stayed for approximately three weeks (2 R. 6, 11, 21). On or about June 4, petitioner drove Misses Williams and Fitzpatrick to Louisville in his car (2 R. 6, 21). Miss Fitzpatrick testified that she asked to go with petitioner because she had relatives in Louisville, and that she paid seven dollars toward the expenses (2 R. 10, 11). She testified that petitioner did not know she was coming to Louisville for the purpose of prostitution and that she did not discuss prostitution with petitioner (2 R. 6, 7, 11–12).

When she was asked, in redirect examination, "[d]id [petitioner] know that you were engaging in prostitution purposes in Cleveland," Miss Fitzpatrick replied, "Yes" (2 R. 14). She said that she did not know how he knew "unless he knew the group, knew the people," but concluded that "[h]e just knew" (2 R. 14).

When they arrived in Louisville, Miss Fitzpatrick spent the first night in a hotel room with petitioner and Miss Williams. She registered as "Sarah Blake" and they as "Mr. and Mrs. John Knight" (2 R. 7–8, 12, 33–35). Miss Fitzpatrick had prostitution dates in Louisville and gave money to petitioner once or twice. She also used petitioner's car for one of her dates. She was arrested approximately two days after her arrival in Louisville (2 R. 8–13).

ARGUMENT

There was sufficient evidence to warrant submission to the jury of the factual issue whether petitioner entertained the requisite immoral purpose in driving

Misses Williams and Fitzpatrick from Cleveland to Louisville. The women named in the indictment were the government's principal witnesses, and they obviously testified with some reluctance. It was proper for the jury, therefore, to infer petitioner's purpose from the conduct of the parties before and after the transportation and not to accept all the explanations given by the women. See *Flanagan* v. *United States,* 308 F. 2d 841 (C.A. 5), certiorari denied, 374 U.S. 838; *United States* v. *Sapperstein,* 312 F. 2d 694 (C.A. 4); *United States* v. *Farber,* 336 F. 2d 586, 588 (C.A. 6).

1. Although Miss Fitzpatrick testified that she had not discussed prostitution with petitioner and that he did not know the real purpose for which she was going to Louisville, she also stated that "he just knew" of her prostitution in Cleveland. This knowledge, when considered in conjunction with the facts that (1) she immediately entered into prostitution in Louisville, (2) she turned over part of her earnings to petitioner in the very short period before she was arrested, and (3) she borrowed his automobile for one prostitution date, warranted an inference by the jury that petitioner transported Miss Fitzpatrick to Louisville in order to benefit from her earnings as a prostitute in that city. Petitioner's prior conduct with regard to Miss Williams—including his instructions to the cabdriver—could properly be considered by the jury in determining the purpose of his conduct vis-à-vis Miss Fitzpatrick. See *Wiley* v. *United States,* 257 F. 2d 900, 906 (C.A. 8).

2. Since petitioner was sentenced for the single trip from Cleveland to Louisville irrespective of the number of women transported on that trip, see *Bell* v. *United States,* 349 U.S. 81, it makes no difference whether his transportation of Miss Williams from Cleveland to Louisville was or was not merely the last leg of "an innocent vacation trip in no way related to the practice of * * * commercial vice" within the meaning of *Mortensen* v. *United States,* 322 U.S. 369, 377. Petitioner's conduct with respect to Miss Williams would have been admissible to establish purpose and motive even if only Miss Fitzpatrick's transportation had been charged as an offense. Consequently, there is no merit to petitioner's claim that he was prejudiced by the submission of all the evidence to the jury (Pet. 30–31).

In any event, the jury, in light of all the circumstances, could have disbelieved Miss Williams' explanation of the trips to Nashville and Cleveland. There was no evidence explaining petitioner's alleged possession of "ten-day" Ohio license plates, nor was that possession consistent with the assertion that petitioner and Miss Williams considered Louisville their home and engaged only in a vacation trip to Nashville and Cleveland. The fact that they surrendered their apartment before leaving Louisville (2 R. 25) lent added support to the conclusion which the jury must have reached—under the trial judge's appropriate instructions (2 R. 40)—that the trip to Cleveland may have been for the purpose of using that city as a base for

their operations and not for the innocent purpose of obtaining license tags.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
FRED M. VINSON, JR.,
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Attorneys.

FEBRUARY 1966.

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